

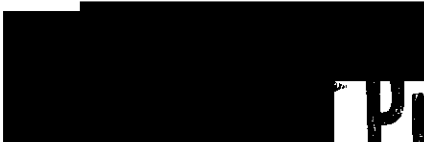


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



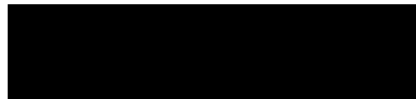
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File: LIN-98-173-50648

Office: Nebraska Service Center

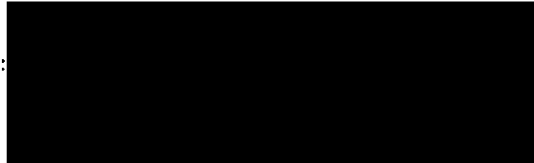
Date: JAN 11 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

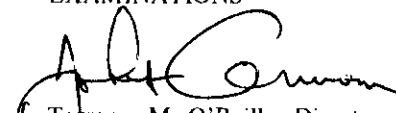
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner, an import and export business, seeks to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief in rebuttal to the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

Title 8 C.F.R. 214.2 (1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- A) Sufficient physical premises to house the new office have been secured;
- B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The foreign petitioner, located in [REDACTED] was established in 1928 and states that the U.S. business, [REDACTED] is its branch office. The United States branch office was formed to export American grown rice to [REDACTED]. The beneficiary is currently employed as the export manager for JFC International Inc., an affiliate of the petitioner. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of \$33,230.

At issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In her decision, the director noted that the petitioner had not provided a comprehensive description of the beneficiary's proposed duties. The director further noted that the petitioner had not established that the beneficiary would function at a senior level within an organizational hierarchy, other than in position title.

On appeal, counsel states in part that:

[The beneficiary] will thereafter assume the responsibilities of directing and managing Pacific Trading's entire United States operations. [The beneficiary] will direct the export of up to 40,000 metric tons (estimated gross sales of over 20 million U.S. dollars) of rice to Japan each year. [The beneficiary] will analyze the rice market in the United States, and make purchase plans based on his analysis in order to purchase products that meet quality demanded by the Japanese consumers. [The beneficiary] will be solely responsible for overseeing the implementation of the purchase and export plans by making final decisions about engaging suppliers as well as negotiating large-scale purchase agreements. [The beneficiary] must make certain that the export by the United States operation meets the quantity and quality requirements of Pacific Trading Japan.

[The beneficiary's] duties also include managing and supervising his subordinates. [The beneficiary] will be solely responsible for managing and overseeing several positions held by the Washington Office employees. His duties will include supervision as well as making decisions on hiring and discharging employees. Initially, [the beneficiary] will supervise two

employees, and as the operation expands, he will be responsible for managing approximately three to five employees, depending on the needs of the operation. Particularly, in 1998, Pacific Trading intends to fill two positions -- one employee handling purchasing/sales/shipping, and the other handling planning/accounting. [The beneficiary] will oversee the purchasing/sales/shipping employee by approving and disapproving purchase and sales agreements negotiated by this employee. He will also supervise the employee to make certain that export requirements and documentation are properly followed. The planning/accounting employee will provide [the beneficiary] with market research upon which [the beneficiary] will rely in order to perform his analysis and make plans for future purchases. This employee will perform general bookkeeping and accounting duties, which will also be supervised by [the beneficiary].

As [the beneficiary] will be solely responsible for the [REDACTED] entire U.S. operation, he will fill the key executive and managerial position in the Pacific Trading's U.S. operation.

After careful review of the record, it has been determined that the beneficiary will manage the petitioner's function of purchasing and exporting rice. The record further reflects that the function is essential, and that the beneficiary will function at a senior level within the organizational hierarchy. The record sufficiently demonstrates that the beneficiary's day-to-day activities will be managerial in nature. Further, the petitioner has demonstrated that it will have a suitable staff to perform the daily activities of the branch office to relieve the beneficiary from performing nonqualifying duties. The record reflects that the petitioner is a well-established corporation formed in 1928 as a subsidiary of Kikkoman Corporation, the world's largest soy-sauce manufacturer. The petitioner's assets exceed thirty million U.S. dollars (\$30,000,000) and its profits for 1997 exceeded one million U.S. dollars (\$1,000,000). Based on the evidence submitted in this case, it is found that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner has overcome the objection of the director, and the petition may be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.